IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE M.NARAYANA REDDY

WRIT PETITION NO : 25330 of 2004

Between:

State of Andhra Pradesh, Rep. by its Dy.Commercial Tax Officer, Bose Road Unit, Gandhi Chowk Circle, Tenali, Guntur District

..... PETITIONER

AND

1 The Presiding Officer, Debts Recovery Tribunal, Dwarakanagar, Visakhapatnam.
2 Central Bank of India, Tenali Branch, Travellers Bangla Road,
Rep. by its Branch Manager, Tenali, Guntur District.
3 M/s Venugopala Rice and Oil Mill, Rep. by its Managing Partner,
Sri Tadepalli Shivalingeswara Rao S/o.Lakshmaiah
R/o.D.No.14-9-8, Ravivari Street, Marispet, Tenali.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly one in the nature of writ of Mandamus declaring the action of the 1st Respondent in directing the petitioner vide his order Dt.19.8.2004 in M.P.No.93/04 in R.P.No.134/03 in O.A.No.321/02 not to proceed with auction proceedings as illegal, arbitrary and without authority of law, and consequently declare that the petitioner shall have first charge over the properties of the 3rd respondent in the light of the provisions of Section 16 (C) of the APGST Act and pass such other order or orders.

Counsel for the Petitioner : MR.K. RAJI REDDY(SPL.SC FOR CT).

Counsel for the Respondent No.1: ___

Counsel for the respondent No.2: MR. A. KRISHNAM RAJU.

Counsel for the respondent No.3: ___

The Court made the following :

ORAL ORDER:

(per Hon'ble The Chief Justice)

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1 . Petitioner is not a party to the proceedings before the Debts Recovery Tribunal, Visakhapatnam. Central Bank of India taken out proceedings against M/s Vijayalakshmi Rice Mills & others for recovery of its dues along with interest. In those proceedings taken out under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an application was filed by the Bank before the Debts Recovery Tribunal praying for an order of restraint against Deputy Commercial Tax Officer, Tenali, from conducting auction in respect of 'D' schedule property alleging that property was pledged with the bank and could not be auctioned by the tax authorities to recover tax liability. The Debts Recovery Tribunal, by the order impugned, granted ad-interim order of injunction restraining Deputy Commercial Tax Officer, Tenali, not to proceed with the auction till further orders.

2. The aforementioned order, to our mind on the face of it, is passed without application of mind and is absolutely without jurisdiction inasmuch as

petitioner herein is not a party before the Debts Recovery Tribunal. Petitioner is enforcing its right to recover the amount of tax in accordance with law and may be that property pledged with the bank was sought to be put to auction in exercise of its right by the Deputy Commercial Tax Officer. That matter not being a subject-matter of recovery proceedings would not confer jurisdiction on the Debts Recovery Tribunal to pass impugned order. In case bank felt aggrieved by the action of Deputy Commercial Tax Officer in putting the property of M/s Vijayalakshmi Rice Mills & others to auction to recover its tax, the Bank ought to have challenged those proceedings in accordance with law but not by approaching the Debts Recovery Tribunal in the proceedings taken by it to recover its dues. Order being wholly without jurisdiction is liable to be quashed with liberty reserved to the Bank to work out its remedies in accordance with law.

3. In the result, writ petition is allowed with liberty aforementioned. No costs.

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DEVINDER GUPTA. C.J.,

_____

M. NARAYANA REDDY. J.,

Dated: 24.01.2005.

VRK.

To

1 The Presiding Officer, Debts Recovery Tribunal,
Dwarakanagar, Visakhapatnam.
2 The Branch Manager, Central Bank of India, Tenali
Branch, Travellers Bangla
Road, Tenali, Guntur District.
3. The Deputy Commercial Tax Officer, Bose Road Unit,
Gandhi Chowk Circle, Tenali, Guntur District.

4. 2 CCs to the Special Standing Counsel for Commercial Taxes (OUT).

5. Two CD copies.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE M. NARAYANA REDDY.

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W.P.NO. 25330 OF 2004.

(Order of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 24.01.2005.